

## § 148.722

marine management areas, and essential fish habitats;

(l) Minimizes the displacement of existing or potential mining, oil, or gas exploration and production or transportation uses;

(m) Takes advantage of areas already allocated for similar use, without overusing such areas;

(n) Avoids permanent interference with natural processes or features that are important to natural currents and wave patterns; and

(o) Avoids dredging in areas where sediments contain high levels of heavy metals, biocides, oil or other pollutants or hazardous materials, and in areas designated wetlands or other protected coastal resources.

[USCG-1998-3884, 71 FR 57651, Sept. 29, 2006, as amended by USCG-2013-0397, 78 FR 39178, July 1, 2013]

### **§ 148.722 Should the construction plan incorporate best available technology and recommended industry practices?**

Each applicant must submit a proposed construction plan. It must incorporate best available technology and recommended industry practices as directed in § 148.730 of this part.

[USCG-1998-3884, 71 FR 57651, Sept. 29, 2006, as amended by USCG-2013-0397, 78 FR 39178, July 1, 2013]

### **§ 148.725 What are the design, construction and operational criteria?**

In accordance with § 148.715(b) of this part, the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

(a) Reflect the use of best available technology in design, construction procedures, operations, and decommissioning;

(b) Include safeguards, backup systems, procedures, and response plans to minimize the possibility and consequences of pollution incidents such as spills and discharges, while permitting safe operation with appropriate safety margins under maximum operating loads and the most adverse operating conditions;

(c) Provide for safe, legal, and environmentally sound waste disposal, resource recovery, affected area reclama-

## 33 CFR Ch. I (7-1-14 Edition)

tion, and enhanced use of spoil and waste;

(d) Avoid permanent interference with natural processes or features that are important to natural currents and wave patterns;

(e) Avoid groundwater drawdown or saltwater intrusion, and minimizes mixing salt, fresh, and brackish waters;

(f) Avoid disrupting natural sheet flow, water flow, and drainage patterns or systems;

(g) Avoid interference with biotic populations, especially breeding habitats or migration routes;

(h) Maximize use of existing facilities;

(i) Provide personnel trained in oil spill prevention at critical locations identified in the accident analysis;

(j) Provide personnel trained in oil spill mitigation; and

(k) Plan for safe and effective removal of the deepwater port in the event of its decommissioning.

[USCG-1998-3884, 71 FR 57651, Sept. 29, 2006, as amended by USCG-2013-0397, 78 FR 39178, July 1, 2013]

### **§ 148.730 What are the land use and coastal zone management criteria?**

In accordance with § 148.715(b) of this part, the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

(a) Accord with existing and planned land use, including management of the coastal region, for which purpose the proposal must be accompanied by a consistency determination from appropriate State agencies for any designated Adjacent Coastal State;

(b) Adhere to proposed local and State master plans;

(c) Minimize the need for special exceptions, zoning variances, or non-conforming uses;

(d) Plan flood plain uses in ways that will minimize wetlands loss, flood damage, the need for federally-funded flood protection or flood relief, or any decrease in the public value of the flood plain as an environmental resource; and

(e) Avoid permanent alteration or harm to wetlands, and take positive

steps to minimize adverse effects on wetlands.

[USCG-1998-3884, 71 FR 57651, Sept. 29, 2006, as amended by USCG-2013-0397, 78 FR 39178, July 1, 2013]

**§ 148.735 What are other critical criteria that must be evaluated?**

In accordance with § 148.715(b) of this part, the deepwater port proposal and reasonable alternatives will be evaluated on the basis of how well they:

- (a) Avoid detrimental effects on human health and safety;
- (b) Pose no compromise to national security;
- (c) Account for the historic, archeological, and cultural significance of the area, including any potential requirements for historical preservation;
- (d) Minimize harmful impacts to minorities and children; and
- (e) Plan for serious consideration of the proposal that offers the least potential for environmental harm to the region, or potential mitigation actions, when conflict exists between two or more proposed uses for a site.

[USCG-1998-3884, 71 FR 57651, Sept. 29, 2006, as amended by USCG-2013-0397, 78 FR 39178, July 1, 2013]

**§ 148.737 What environmental statutes must an applicant follow?**

In constructing and operating a deepwater port, the deepwater port must comply with all applicable Federal, State, and tribal environmental statutes. For the purposes of information, a list of Federal environmental statutes and Executive Orders (E.O.s) that may apply includes but is not limited to: Abandoned Shipwreck Act (ASA), 43 U.S.C. 2102, *et. seq.*; American Indian Religious Freedom Act (AIRFA), 42 U.S.C. 1996, *et. seq.*; Antiquities Act, 16 U.S.C. 433, *et. seq.*; Archeological and Historic Preservation Act (AHPA), 16 U.S.C. 469; Archeological Resources Protection Act (ARPA), 16 U.S.C. 470 *aa-ll, et. seq.*; Architectural Barriers Act, 42 U.S.C. 4151, *et. seq.*; Clean Air Act (CAA), Pub. L. 95-95, 42 U.S.C. 7401, *et. seq.*; Clean Water Act of 1977 (CWA), Pub. L. 95-217, 33 U.S.C. 1251, *et. seq.*; Coastal Barrier Resources Act (CBRA), Pub. L. 97-348, 16 U.S.C. 3510, *et. seq.*; Coastal Zone Management Act (CZMA), Pub. L. 92-583, 16 U.S.C. 1451,

*et. seq.*; Community Environmental Response Facilitation Act (CERFA), 42 U.S.C. 9620, *et. seq.*; Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also commonly referred to as Superfund, Pub. L. 96-510, 26 U.S.C. 4611, *et. seq.*; Consultation and Coordination With Indian Tribal Governments, E.O. 13175, 65 FR 67249; Coral Reef Protection, E.O. 13089, 63 FR 32701; Department of Transportation Act, Section 4(f), Pub. L. 89-670, 49 U.S.C. 303, Section 4(f), *et. seq.*; Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001-11050, *et. seq.*; Endangered Species Act of 1973 (ESA), Pub. L. 93-205, 16 U.S.C. 1531, *et. seq.*; Energy Efficiency and Water Conservation at Federal Facilities, E.O. 12902, 59 FR 11463; Environmental Effects Abroad of Major Federal Agencies, E.O. 12114, 44 FR 1957; Environmental Quality Improvement Act, Pub. L. 98-581, 42 U.S.C. 4371, *et. seq.*; Farmlands Protection Policy Act, Pub. L. 97-98, 7 U.S.C. 4201, *et. seq.*; Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, E.O. 12898, 59 FR 7629; Federal Compliance with Pollution Control Standards, E.O. 12088, 43 FR 47707; Federal Insecticide, Fungicide, and Rodenticide Act, Pub. L. 86-139, 7 U.S.C. 135, *et. seq.*; Federal Records Act (FRA), 44 U.S.C. 2101-3324, *et. seq.*; Federalism, E.O. 13083; Fish and Wildlife Act of 1956, Pub. L. 85-888, 16 U.S.C. 742, *et. seq.*; Fish and Wildlife Coordination Act, (Pub. L. 85-624, 16 U.S.C. 661, *et. seq.*; Fisheries Conservation and Recovery Act of 1976, Pub. L. 94-265, 16 U.S.C. 1801, *et. seq.*; Flood Disaster Protection Act, 42 U.S.C. 4001, *et. seq.*; Flood Plain Management and Protection, E.O. 11988, 42 FR 26951; Greening the Government Through Leadership in Environmental Management, E.O. 13148, 65 FR 24595; 63 FR 49643; Historic Sites Act, 16 U.S.C. 46, *et. seq.*; Indian Sacred Sites, E.O. 13007, 61 FR 26771; Intergovernmental Review of Federal Programs E.O. 12372, 47 FR 30959; Invasive Species, E.O. 13112, 64 FR 6183; Locating Federal Facilities on Historic Properties in our Nation's Central Cities, E.O. 13006, 61 FR 26071; Magnuson-Stevens Fishery Conservation and Management Act as amended through October 11, 1996, 16